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SENATE BILL 983

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO INSURANCE; AMENDING AND ENACTING SECTIONS OF THE
NEW MEXICO INSURANCE CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-5-29 NMSA 1978 (being Laws 1984,
Chapter 127, Section 96, as amended) is amended to read:

"59A-5-29. ANNUAL STATEMENT. --

A. Each authorized insurer shall annually on or
before March 1, or within any reasonable extension of time
which the superintendent for good cause may have granted on or
before such date, file with the superintendent and with the
national association of insurance commissioners a full and true
statement of its financial condition and of its transactions
and affairs as of the December 31 next preceding. The
statement shall be prepared in the form of the annual statement

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1 blank prescribed by the national association of insurance
2 commissioners for use in the United States for the type of
3 insurer and kinds of insurance to be reported upon, in
4 accordance with the annual statement instructions and the
5 accounting practices and procedures manual published by the
6 national association of insurance commissioners, or such other
7 form and instructions as the superintendent may prescribe, and
8 supplemented by additional information reasonably required by
9 the superintendent; the superintendent may require that the
10 annual statement data ~~also~~ be filed in electronically
11 readable format, or may accept in lieu of filing a statement or
12 supplemental information filed in electronic format with the
13 national association of insurance commissioners that is readily
14 available to the superintendent and that the superintendent can
15 reproduce or otherwise make available to the public for a
16 period of at least five years from the date that the filing is
17 due. The statement shall be verified by the oath of the
18 insurer's president or vice president and secretary or actuary,
19 as applicable; or, in absence of the foregoing, by two other
20 principal officers; or if a reciprocal insurer or Lloyds
21 insurer, the oath of the attorney-in-fact or its like officers
22 if a corporation.

23 B. The statement of an alien insurer shall be
24 verified by its United States manager or other officer duly
25 authorized and shall relate only to the insurer's transactions

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1 and affairs in the United States unless the superintendent
2 requires otherwise. If the superintendent requires a statement
3 as to the alien insurer's affairs throughout the world, the
4 insurer shall file such statement with the superintendent as
5 soon as reasonably possible.

6 C. If the insurer's statement is in any language
7 other than English or in monetary amounts other than United
8 States dollars, the statement shall be accompanied by an
9 English-language translation and monetary amounts shall be
10 shown in United States dollars with statement of the basis upon
11 and date as of which the monetary conversion was made.

12 D. The superintendent may suspend or revoke the
13 certificate of authority of any insurer failing to file its
14 annual statement when due.

15 E. At time of filing, the insurer shall pay the fee
16 for filing its annual statement with the superintendent as
17 prescribed by Section 59A-6-1 NMSA 1978, and pay to the
18 national association of insurance commissioners the fee
19 established for filing, review or processing of the
20 information, unless such fee has been disapproved by the
21 superintendent.

22 F. In the absence of actual malice, members of
23 national association of insurance commissioners, their duly
24 authorized committees, subcommittees and task forces, their
25 delegates, employees and all others charged by the

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1 superintendent or the national association of insurance
2 commissioners with the responsibility of collecting, reviewing,
3 analyzing and disseminating the information developed from the
4 filing of the annual statement blanks shall be acting as agents
5 of the superintendent under the authority of the Insurance Code
6 and shall not be subject to civil liability for libel, slander
7 or any other cause of action by virtue of their collection,
8 review and analysis or dissemination of the data and
9 information collected from the filings required hereunder.

10 G. As to publication of nonstatutory financial
11 statements, refer to Section 59A-16-9 NMSA 1978. "

12 Section 2. Section 59A-6-2 NMSA 1978 (being Laws 1984,
13 Chapter 127, Section 102, as amended) is amended to read:

14 "59A-6-2. PREMIUM TAX--HEALTH INSURANCE PREMIUM SURTAX. --

15 A. The premium tax provided for in this section
16 shall apply as to the following taxpayers:

17 (1) each insurer authorized to transact
18 insurance in New Mexico;

19 (2) each insurer formerly authorized to
20 transact insurance in New Mexico and receiving premiums on
21 policies remaining in force in New Mexico, except that this
22 provision shall not apply as to an insurer that withdrew from
23 New Mexico prior to March 26, 1955;

24 (3) each plan operating under provisions of
25 Chapter 59A, Articles 46 through 49 NMSA 1978;

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1 (4) each property bondsman, as that person is
2 defined in Section 59A-51-2 NMSA 1978, as to any consideration
3 received as security or surety for a bail bond in connection
4 with a judicial proceeding, which consideration shall be
5 considered "gross premiums" for the purposes of this section;
6 and

7 (5) each unauthorized insurer that has assumed
8 a contract or policy of insurance directly or indirectly from
9 an authorized or formerly authorized insurer and is receiving
10 premiums on such policies remaining in force in New Mexico,
11 except that this provision shall not apply if a ceding insurer
12 continues to pay the tax provided in this section as to such
13 policy or contract.

14 B. Each such taxpayer shall pay in accordance with
15 this subsection a premium tax of three and three-thousandths
16 percent of the gross premiums and membership and policy fees
17 received or written by it, as reported in Schedule T and
18 supporting schedules of its annual financial statement, on
19 insurance or contracts covering risks within this state during
20 the preceding calendar year, less all return premiums,
21 including dividends paid or credited to policyholders or
22 contract holders and premiums received for reinsurance on New
23 Mexico risks.

24 C. In addition to the premium tax imposed pursuant
25 to Subsection B of this section, each taxpayer described in

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1 Subsection A of this section that transacts health insurance in
2 New Mexico or is a plan described in Chapter 59A, Article 46 or
3 47 NMSA 1978 shall pay a health insurance premium surtax of one
4 percent of the gross health insurance premiums and membership
5 and policy fees received by it on health insurance or
6 contracts, excluding disability income insurance or contracts,
7 covering health risks within this state during the preceding
8 calendar year, less all return health insurance premiums,
9 including dividends paid or credited to policyholders or
10 contract holders and health insurance premiums received for
11 reinsurance on New Mexico risks. Except as provided in this
12 section, all references in the Insurance Code to the premium
13 tax shall include both the premium tax and the health insurance
14 premium surtax.

15 D. For each calendar quarter, an estimated payment
16 of the premium tax and the health insurance premium surtax
17 shall be made on April 15, July 15, October 15 and the
18 following January 15. The estimated payments shall be equal to
19 at least one-fourth of either the payment made during the
20 previous calendar year or eighty percent of the actual payment
21 due for the current calendar year, whichever is greater. The
22 final adjustment for payments due for the prior year shall be
23 made with the return, which shall be filed on April 15 of each
24 year, at which time all taxes for that year are due. Dividends
25 paid or credited to policyholders or contract holders and

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1 refunds, savings, savings coupons and similar returns or
2 credits applied or credited to payment of premiums for
3 existing, new or additional insurance shall, in the amount so
4 used, constitute premiums subject to tax under this section for
5 the year in which so applied or credited.

6 E. Exempted from the taxes imposed by this section
7 are:

8 (1) premiums attributable to insurance or
9 contracts purchased by the state or a political subdivision for
10 the state's or political subdivision's active or retired
11 employees; and

12 (2) payments received by a health maintenance
13 organization from the federal secretary of health and human
14 services pursuant to a contract issued under the provisions of
15 42 U.S.C. Section 1395 mm(g). "

16 Section 3. Section 59A-6-5 NMSA 1978 (being Laws 1984,
17 Chapter 127, Section 105, as amended) is amended to read:

18 "59A-6-5. DISTRIBUTION OF DIVISION COLLECTIONS. --

19 A. All money received by the division for fees,
20 licenses, penalties and taxes shall be paid daily by the
21 superintendent to the state treasurer and by him credited to
22 the "insurance department suspense fund" except as provided by:

- 23 (1) the Law Enforcement Protection Fund Act;
- 24 (2) Section 59A-6-1.1 NMSA 1978; and
- 25 (3) the Voter Action Act.

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1 B. The superintendent may authorize refund of money
2 erroneously paid as fees, licenses, penalties or taxes from the
3 insurance department suspense fund under request for refund
4 made within three years after the erroneous payment. In the
5 case of premium taxes erroneously paid or overpaid in
6 accordance with law, refund may also be requested as a credit
7 against premium taxes due in any annual or quarterly premium
8 tax return filed within three years of the erroneous or excess
9 payment.

10 C. The "insurance operations fund" is created in
11 the state treasury. The fund shall consist of the
12 distributions made to it pursuant to Subsection D of this
13 section. The legislature shall annually appropriate from the
14 fund to the division those amounts necessary for the division
15 to carry out its responsibilities pursuant to the Insurance
16 Code and other laws. Any balance in the fund at the end of a
17 fiscal year greater than one-half of that fiscal year's
18 appropriation shall revert to the general fund.

19 D. At the end of every month, after applicable
20 refunds are made pursuant to Subsection B of this section, the
21 treasurer shall make the following transfers from the balance
22 remaining in the insurance department suspense fund:

23 (1) to the "fire protection fund", that part
24 of the balance derived from property and vehicle insurance
25 business;

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1 (2) to the insurance operations fund, that
2 part of the balance derived from the fees imposed pursuant to
3 Subsections A and E of Section 59A-6-1 NMSA 1978 other than
4 fees derived from property and vehicle insurance business; and

5 (3) to the general fund, the balance remaining
6 in the insurance department suspense fund derived from all
7 other kinds of insurance business. "

8 Section 4. A new section of the New Mexico Insurance Code
9 is enacted to read:

10 "[NEW MATERIAL] DISHONORED CHECKS AND OTHER FORMS OF
11 PAYMENT--PENALTY. --When a check or an electronic payment
12 transaction for payment of fees is dishonored or reversed by
13 the payer's financial institution, the payer shall pay to the
14 insurance division a civil penalty in the amount of twenty-five
15 dollars (\$25.00). Neither the division nor the fiscal agent of
16 New Mexico is obligated to resubmit the transaction or check
17 for payment. The superintendent shall treat the transaction as
18 though payment has not been made and cancel, suspend, rescind
19 or revoke the transaction for failure to make payment. Any
20 other penalty, reinstatement fee or other cost associated with
21 failure to make the payment shall be in addition to the penalty
22 set forth in this section. In this section, "electronic
23 payment transaction" means credit card payments, electronic
24 fund transfers, automated clearinghouse transactions and other
25 similar forms of payment. "

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1 Section 5. Section 59A-12-6 NMSA 1978 (being Laws 1984,
2 Chapter 127, Section 207, as amended) is amended to read:

3 "59A-12-6. LICENSE REQUIRED--PENALTY. --

4 A. No person shall in this state be, act as or hold
5 himself out to be, as to subjects of insurance resident,
6 located or to be performed in this state or elsewhere, an agent
7 or solicitor unless then licensed as such under the Insurance
8 Code.

9 B. No authorized insurer shall accept insurance of
10 any subject located, resident or to be performed in this state
11 through any person acting as insurance agent in this state if
12 the insurer knows, or reasonably should have known, that such
13 person was not then licensed as an agent as to such insurance
14 or not appointed as its agent by the insurer.

15 C. No license as agent or broker shall be issued to
16 any entity other than an individual, firm (partnership) or
17 corporation.

18 D. No agent or solicitor shall solicit or take an
19 application for, or place for others, any kind of insurance as
20 to which not then so licensed.

21 E. No agent shall place any insurance with any
22 insurer as to which not then licensed or appointed as agent
23 under the Insurance Code except as permitted by Section
24 59A-11-10 NMSA 1978.

25 F. A license as agent or solicitor, or appointment
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1 as agent of a particular insurer, shall not be in effect until
2 the license has actually been delivered to the agent or
3 solicitor or to the solicitor's employer agent or the
4 appointment has been duly filed with and approved by the
5 superintendent.

6 G. In addition to any applicable denial, suspension
7 or revocation of license, refusal to continue license, or
8 administrative fine, violation of this section shall be a
9 misdemeanor punishable by a fine of from one hundred dollars
10 (\$100) to five hundred dollars (\$500) and by forfeiture to the
11 state of New Mexico of an amount equal to all compensation for
12 services as agent or solicitor received or to be received by
13 the violator by reason of the prohibited transactions. "

14 Section 6. Section 59A-12-18 NMSA 1978 (being Laws 1984,
15 Chapter 127, Section 219, as amended by Laws 2002, Chapter 24,
16 Section 1 and by Laws 2002, Chapter 87, Section 1) is amended
17 to read:

18 "59A-12-18. LIMITED LICENSE. --

19 A. The superintendent may issue a limited agent's
20 license to:

21 (1) individual applicants qualified [~~therefor~~
22 ~~under~~] pursuant to Chapter 59A, Article 12 NMSA 1978 and
23 employed as transportation ticket sellers by public carriers,
24 who in the course of such employment solicit or sell insurance
25 incidental to transportation of persons or storage or

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1 transportation of baggage, and the license is limited to that
2 insurance ~~[so transacted]~~; or ~~[to]~~

3 (2) individual applicants employed full time
4 by a vendor of merchandise or other property or by a financial
5 institution making consumer loans, on terms with respect to
6 which credit life ~~[and]~~ insurance or health ~~[insurances or~~
7 ~~either]~~ insurance, under individual policies is customarily
8 required of or offered to the purchaser or borrower, covering
9 only ~~[such]~~ that credit life and health insurance.

10 B. The superintendent may issue a limited agent's
11 license to applicants who are ~~[employees, agents or authorized~~
12 ~~representatives of]~~ retail vendors or lessors of communication
13 equipment or services. The license shall authorize the
14 licensee, in connection with the lease, retail sale or
15 provision of communication equipment or communication services
16 for communication equipment, to sell insurance covering the
17 loss, theft, mechanical failure or malfunction of or damage to
18 the communication equipment. ~~[Licensees pursuant to this~~
19 ~~subsection shall receive initial training from, and shall be~~
20 ~~under the oversight of, a general lines agent licensed pursuant~~
21 ~~to Chapter 59A, Article 12 NMSA 1978.]~~ The licensee shall
22 provide for the training of its employees who are authorized to
23 sell this insurance. The conduct of the licensee's business
24 under the limited license by its employees shall be attributed
25 to the licensee. As used in this subsection, "communication

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1 equipment" means handsets, pagers, personal digital assistants,
2 portable computers, automatic answering devices, batteries and
3 other devices or their accessories used to originate or receive
4 communication signals or service, and includes services related
5 to the use of such devices such as access to a network.

6 C. No holder of a limited license issued pursuant
7 to this section shall concurrently be otherwise licensed
8 under the Insurance Code. "

9 Section 7. Section 59A-13-2 NMSA 1978 (being Laws 1984,
10 Chapter 127, Section 230, as amended) is amended to read:

11 "59A-13-2. DEFINITIONS. --

12 A. For the purposes of the Insurance Code:

13 (1) "adjuster" is a person that:

14 (a) investigates, negotiates, settles or
15 adjusts a loss or claim arising under an insurance contract on
16 behalf of an insurer, insured or self-insurer, for a fee,
17 commission or other compensation; however, an adjuster acting
18 on behalf of an insured shall not investigate, negotiate,
19 settle or adjust a claim involving personal injury to the
20 insured; and

21 (b) advises the insured of his rights to
22 settlement and his rights to settle, arbitrate and litigate the
23 dispute;

24 (2) "staff adjuster" is an adjuster individual
25 who is a salaried employee of an insurer, representing and

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1 adjusting claims solely under policies of the employer insurer
2 or affiliates of the employer insurer; and

3 (3) "independent adjuster" is an adjuster who
4 is not a staff adjuster and includes a representative and an
5 employee of an independent adjuster.

6 B. Except as otherwise provided, "adjuster" does
7 not include:

8 (1) an attorney-at-law who adjusts insurance
9 losses or claims from time to time incidental to practice of
10 law and who does not advertise or represent as an adjuster;

11 (2) a licensed agent or general agent of an
12 authorized insurer or an employee of an agent or general agent
13 who adjusts claims or losses under specific authority from the
14 insurer and solely under policies issued by the insurer;

15 (3) an agent or employee of a life or health
16 insurer who adjusts claims or losses under the insurer's
17 policies or contracts to administer policies or benefits of
18 that type; or

19 (4) a salaried or part-time claims agent or
20 investigator employed by a self-insured person. "

21 Section 8. Section 59A-13-8 NMSA 1978 (being Laws 1984,
22 Chapter 127, Section 236) is amended to read:

23 "59A-13-8. POWERS CONFERRED BY ADJUSTER LICENSE. -- An
24 independent adjuster shall have power to investigate and report
25 to the principal, represented, [~~upon~~] and if [~~so~~] authorized by

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1 [such] the principal, adjust and settle claims on behalf of an
2 insurer or self-insurer, and have [such] additional powers as
3 to claims and losses as may be conferred by the principal. A
4 staff adjuster shall have only such powers with respect to
5 claims and losses as granted by the adjuster's employer or
6 affiliates of the adjuster's employer. A temporary adjuster
7 shall, as to claims and losses, have the powers of the
8 employer, subject to extension or limitation by contract. "

9 Section 9. Section 59A-13-9 NMSA 1978 (being Laws 1984,
10 Chapter 127, Section 237, as amended) is amended to read:

11 "59A-13-9. PLACE OF BUSINESS. --A licensed adjuster shall
12 [~~have and~~] maintain a principal place of business [~~in the~~
13 ~~state~~] that is easily accessible to the public and is the place
14 where the adjuster principally conducts transactions under the
15 license. The address of the principal place of business shall
16 appear on the application for license and on the license. The
17 licensee shall promptly notify the superintendent of a change
18 of address of the principal place of business. Failure to
19 notify the superintendent of a change of address within twenty
20 days shall subject the licensee to a penalty in the amount of
21 fifty dollars (\$50.00). "

22 Section 10. Section 59A-48-19 NMSA 1978 (being Laws 1984,
23 Chapter 127, Section 898, as amended) is amended to read:

24 "59A-48-19. OTHER PROVISIONS APPLICABLE. --In addition to
25 those referred to in Chapter 59A, Article 48 NMSA 1978, the

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1 following articles and provisions of the Insurance Code shall
2 also apply, to the extent reasonably applicable and subject to
3 the provisions of that article, as to prepaid dental plan
4 organizations, their sponsors, directors, officers, personnel
5 and representatives and member contracts. For the purposes of
6 this provision, such organizations may be referred to as
7 "insurers" and such contracts as "policies":

- 8 A. Chapter 59A, Article 1 NMSA 1978;
- 9 B. Chapter 59A, Article 2 NMSA 1978;
- 10 C. Chapter 59A, Article 4 NMSA 1978;
- 11 D. Subsection C of Section 59A-5-22 NMSA 1978;
- 12 E. Section 59A-5-33 NMSA 1978;
- 13 F. Sections 59A-6-1, 59A-6-3, 59A-6-4 and 59A-6-6
14 NMSA 1978;
- 15 G. Section 59A-7-11 NMSA 1978;
- 16 H. Chapter 59A, Article 8 NMSA 1978;
- 17 I. Chapter 59A, Article 10 NMSA 1978;
- 18 J. Section 59A-12-22 NMSA 1978;
- 19 K. the Insurance Fraud Act;
- 20 L. Chapter 59A, Article 18 NMSA 1978;
- 21 M. the Policy Language Simplification Law; [and]
- 22 N. Section 59A-34-10 NMSA 1978, as to domestic
23 prepaid dental plans; and
24 O. the Insurance Holding Company Law. "

25 Section 11. Section 59A-58-6 NMSA 1978 (being Laws 2001,

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1 Chapter 206, Section 6) is amended to read:

2 "59A-58-6. SECURITY REQUIRED FOR REGISTRATION OF
3 PROVIDER. --

4 A. To assure the faithful performance of a
5 provider's obligations to ~~[his]~~ the provider's contract
6 holders, a provider shall maintain a deposit with the
7 superintendent as provided in this section.

8 B. A provider of a service contract shall deposit
9 fifty thousand dollars (\$50,000) unless the contract covers the
10 following, in which case ~~[he]~~ the provider shall deposit one
11 hundred thousand dollars (\$100,000):

12 (1) a motor vehicle; and

13 (2) mechanical, plumbing and electrical
14 systems and appliances at a residential dwelling when the
15 service contract was sold in conjunction with the sale of the
16 residential dwelling.

17 C. Deposits required pursuant to Subsection B of
18 this section shall be:

19 (1) a surety bond issued by a surety company
20 authorized to do business in New Mexico on a form acceptable to
21 the superintendent;

22 (2) securities of the type eligible for
23 deposit by an insurance company; or

24 [~~(3)~~ ~~cash; or~~

25 ~~(4)] (3) a clean and irrevocable letter of~~

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1 credit issued by a financial institution acceptable to the
2 superintendent.

3 D. Additional financial security may be required of
4 any provider when it is determined by the superintendent that
5 an additional deposit is necessary for the protection of the
6 public.

7 E. The provisions of this section shall not apply
8 to major manufacturing companies' service contracts. "

9 Section 12. TEMPORARY PROVISION--RECOMPILATION. --The
10 compiler shall recompile Section 8-8-9.2 NMSA 1978 (being Laws
11 2003, Chapter 235, Section 3) as part of the New Mexico
12 Insurance Code.

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